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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,916	04/12/2004	Byoung-Woo Cho	1749.1009	2452
21171	7590	10/03/2005	EXAMINER	
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			NERBUN, PETER P	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/821,916

Applicant(s)

CHO, BYOUNG-WOO

Examiner

Peter P. Nerbun

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yan (U.S.P. 6,131,202) in view of Hotta et al (U.S.P. 6,705,353), taken as applied in paper no. 01112005.

The patent to Yan discloses elastic headwear comprising a head-covering portion having a plurality of pieces 4,6,12, Fig. 2 at least one piece being made of a woven fabric (see col. 3, lines 56-58) and a sweatband 26, Figs. 5, 6 enclosed by a cover 28 and being stretchable in at least a circumferential direction thereof. To construct the cap of Yan using woven fabric for the pieces 4,6,12, and 28 composed of textured yarns without elastic yarns as suggested by Hotta et al (see col. 3, lines 7-13 and col. 33, lines 34-35 of Hotta et al) would have been obvious since Hotta et al states that the prior art method of using an elastic fiber is undesirable since the tightening force exerted by elastic fibers is too strong (see col. 1, lines 29-31 of Hotta et al). Note that the cover 28 is a part of the sweatband since sweat from the wearer is partially contained by the cover. The particular cross sectional size of the warp and weft yarns (viz. 150 denier) in the formed cap of Yan could have been selected in an obvious manner because limitations relating to size *per se* are not sufficient to patentably distinguish over the prior art -- *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Applicant's arguments filed July 11, 2005 have been fully considered but they are not persuasive. Applicant states that Hotta does not recite 150 denier polyester as warp yarns and 150 denier textured polyester yarns as weft yarn. Hotta discloses a woven fabric for sportswear or outerwear is characterized in that the warp yarn and/or the weft yarn is prepared from a

Art Unit: 3765

textured polyester yarn (see col. 3, lines 7-13 and col. 33, lines 34-35). As noted above the particular cross sectional size of the warp and weft yarns (viz. 150 denier) in the formed cap of Yan could have been selected in an obvious manner because limitations relating to size *per se* are not sufficient to patentably distinguish over the prior art -- *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter P. Nerbun whose telephone number is 571-272-4993. The examiner can normally be reached on M-F (1st Week) M-Th (2d Week).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3765

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Peter Nerbun
September 26, 2005

A handwritten signature in black ink, appearing to read "Peter Nerbun". The signature is fluid and cursive, with the first name "Peter" and last name "Nerbun" clearly distinguishable.

Peter Nerbun
Primary Examiner